IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12857 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KUMAR M DESAI PROP. OF OMEGA ELEVATORS

Versus

COMMISSIONER OF SALES TAX

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Appearance:
MR HJ NANAVATI for Petitioner
MR UDAY R BHATT, AGP for Respondent No. 1, 2

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CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 05/03/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

In this petition which is filed under Article 226 of the Constitution, the petitioner has prayed to issue a writ of mandamus or any other appropriate writ, order or direction to quash and set aside the order dated June 4, 1999 passed by the Sales Tax Officer (I), Unit No. 21, Ahmedabad under Sections 59(4) and 59(5) of the Gujarat Sales Tax Act, 1969 read with Rule 62 of the Gujarat Sales Tax Rules by which the books of accounts and other documents such as registers, etc. seized are retained in connection with the proceedings under the said Act. The petitioner has further prayed to direct the respondents to return the documents seized pursuant to the order dated June 4, 1999.

2. The petitioner is engaged in the business of manufacture and assembly of elevators and lifts. The petitioner is a dealer within the meaning of the provisions of the Gujarat Sales Tax Act, 1969 (`the Act' for short) but carries on business without holding a valid certificate of registration. The competent authority acting under the Act had reason to believe that the petitioner as a dealer had evaded payment of tax due from it and, therefore, in exercise of powers conferred on him by sub-section (4) read with sub-section (5) of Section 59 of the Act has seized books of accounts, registers, etc. and retained the same in connection with the proceedings under the Act. The petitioner had availed of modvat credit without having valid duty documents. Therefore, the Assistant Commissioner, Central Excise, Division III, Ahmedabad had issued notice dated September 2, 1988 calling up the petitioner to show cause as to why modvat credit amounting to Rs.4,31,779/should not be ordered to be recovered and a penalty of Rs. 1,00,000/- be not imposed under Rule 173(1)(bb) of the Central Excise Rules, 1944. Though several opportunities were given, the petitioner could not produce the original documents on the basis of which modvat credit was availed of and, therefore, the Assistant Commissioner has passed order dated March 27, 2000 disallowing the modvat credit and imposing penalty. The order passed by the Assistant Commissioner, Central Excise, Division II, Ahmedabad is produced by the petitioner at Annexure "E" to the petition. Feeling aggrieved by the said order, the petitioner has preferred an appeal before the Commissioner of Central Excise (Appeals), Ahmedabad which is pending for disposal. The grievance made by the petitioner is that though requested, the respondents have not returned the original documents to the petitioner so as to enable the petitioner to produce the same before the competent authority hearing the appeal and, therefore, the

petitioner is suffering irreparable loss. The petitioner has also contended that the order of seizure of documents is illegal and liable to be set aside. Under the circumstances, the petitioner has filed the present petition and claimed reliefs to which reference is made earlier.

3. On notice being served, Mr I.I. Malek, Sales Tax Officer (1), City Unit 21, Ahmedabad has filed reply affidavit on behalf of the respondent No. 2 controverting the averments made in the petition.

4. We have heard the learned counsel for the parties. From the record of the case, it is evident that the documents seized have been retained by the Sales Tax Officer in relation to the proceedings initiated against the petitioner under the Act. The order in original passed by the Assistant Commissioner, Central Excise, Division I, Ahmedabad manifests that modvat credit amounting to Rs.4,31,779/- came to be disallowed and penalty came to be imposed on the petitioner because the petitioner could not produce the original documents before the competent authority. In view of the provisions of Rule 57G(8) of the Central Excise Rules it was incumbent upon the petitioner to produce the original documents for the purpose of establishing the case that modvat credit was rightly availed of. Under the circumstances, we are of the opinion that interest of justice would be served if the respondent No. 2 is directed to produce the original documents seized under Section 59(4) of the Gujarat Sales Tax Act, 1969 before the Commissioner of Central Excise (Appeals), Ahmedabad at the time of hearing of the appeal.

5. For the foregoing reasons, the petition succeeds. The petitioner is directed to produce copy of the notice received by him from the office of the Commissioner of Central Excise (Appeals), Ahmedabad indicating the date of hearing before the respondent No. 2. On production of the said notice, the respondent No. 2 shall produce the necessary documents seized, before the Commissioner of Central Excise (Appeals), Ahmedabad for the purpose of hearing of the appeal alongwith an application. This application shall be recorded in the rojkam by the Commissioner of Central Excise (Appeals), Ahmedabad. After the appeal filed by the petitioner is decided, the documents shall be sent back to the respondent No. 2 by the Commissioner of Central Excise (Appeals), Ahmedabad as early as possible, but not later than ten days from the date of his decision in appeal.

Rule is made absolute accordingly with no order as to costs.

(J.M. Panchal, J.)

(M.S. Shah, J.)

sundar/-